

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7187

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United States Court of Appeals

FOR THE SECOND CIRCUIT

JEAN D'AGOSTA,

Plaintiff-Appellee,

—v.—

W. T. GRANT COMPANY,

Defendant-Appellant.

APPENDIX

WILLIAM J. EGAN
J. MICHAEL EISNER
DAVID A. REIF
WIGGIN & DANA

Attorneys for Defendant-Appellant

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205 Church Street

New Haven, Connecticut

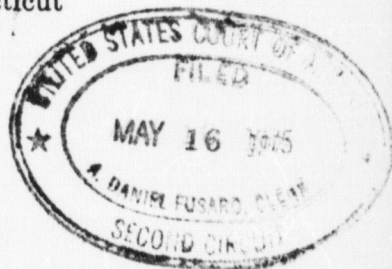
WILLIAM H. CLENDENEN, JR.

DAVID M. LESSER

Attorneys for Plaintiff-Appellee

152 Temple Street

New Haven, Connecticut



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Docket Entries

DATE

PROCEEDINGS

1973

11/29 Complaint filed. Summons issued.

11/29 Notice to Clerk, filed.

12/5 Marshal's Return Showing Service, filed.—Summons & Complaint.

12/14 Request for Jury Trial, filed by plaintiff.

12/21 Appearance of Atty. William J. Egan entered for defendant.

1974

1/25 Request to enter Default, filed by plaintiff. Default entered under Rule 55(a). Markowski, C. M-1/25/74. Copies mailed.

5/6 Stipulation filed that the default entered against the defendant on January 25, 1974 may be set aside. Ordered Accordingly. Markowski, C. M-5/3/74. Copies mailed.

5/6 Answer Presenting Defenses Under Rule 12B, filed by defendant.

5/14 Motion for Partial Summary Judgment against defendant W.T. Grant Company with Affidavit of Jean D'Agosta, filed by plaintiff.

5/15 Reply to Counterclaim, filed by plaintiff.

5/15 Placed on trial list.

5/22 Memorandum of Law in Support of Motion for Partial Summary Judgment, filed by plaintiff.

Docket Entries

DATE	PROCEEDINGS
6/27	Motion for Stay, filed by defendant.
8/19	Defendant's Motion for Stay, scheduled for August 26, 1974, "Off, by agreement". Latimer, U.S. Mag. M-8/19/74
8/21	Defendant's Motion for Stay, endorsed as follows: "Motion off, without prejudice." Latimer, U.S. Mag. M-8/21/74. Copies mailed.
8/26	Defendant's Motion for Stay "Off"/ Latimer, U.S. Mag. 8/26/74
1975	
3/4	Ruling on Plaintiff's Motion for Partial Summary Judgment entered. Judgment shall accordingly enter for plaintiff on Count I of the complaint in the amount of such attorney's fee award together with the sum of \$776.98 in connection with the transaction of December 1, 1972 and the sum of \$872.00 in connection with the transaction of Dec. 13, 1972, cf. Rule 54(b), F.R.C.P. Latimer, U.S. Mag. So Ordered. Newman, J. M-3/4/75 Copies mailed.
3/5	Partial Summary Judgment entered. Partial Summary Judgment entered for the plaintiff on Count 1 of the complaint in the amount of such attorney's fee award together with the sum of \$776.98 in connection with the transaction of December 1, 1972, and the sum of \$872.00 in connection with the transaction of December 13, 1972, cf. Rule 54(b), F.R.Civ.P. Dated at New Haven,

Docket Entries

DATE

PROCEEDINGS

Connecticut, this 5th day of March, 1975. Markowski, C. M-3/6/75 Copies mailed.

3/12 Bill of Costs, filed by plaintiff.

3/14 Costs taxed in favor of plaintiff in the amount of \$38.24. Markowski, C. M-3/17/75 Copies mailed.

3/17 Motion For Stay Of Proceedings To Enforce Judgment, filed by defendant.

3/18 Notice of Appeal, filed by Defendant. Copies mailed. Copy to U.S.C.A. with copy of Docket Entries.

4/2 Defendant's Motion For Stay Of Proceedings To Enforce Judgment endorsed and follows: "4/1/75 Motion off by consent. Newman, J. M 4/2/75 Copies mailed.

Complaint

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. 15923

JEAN D'AGOSTA,

Plaintiff,

vs.

W. T. GRANT COMPANY,

Defendant.

1. This is an action for damages for violation of Sec. 36-393 *et seq.*, and 42-83 *et seq.*, of the Connecticut General Statutes.

2. Jurisdiction is conferred on this Court by Title 15 U.S.C. §1640(e).

3. Jean D'Agosta, Plaintiff is a citizen of the United States and of the State of Connecticut and a resident of the Town of New Haven.

4. W. T. Grant Company, Defendant, is a Delaware Corporation authorized to do business in Connecticut with a principal place of business in New York, New York.

5. On or about December 1, 1972, Plaintiff entered into a consumer credit transaction for the purchase of merchandise by signing a retail instalment contract and security agreement with Defendant.

Complaint

6. On or about December 13, 1972, Plaintiff entered into a consumer credit transaction for the purchase of merchandise by signing a retail instalment contract and security agreement with Defendant.

7. On other occasions prior to said dates, Plaintiff entered into a consumer credit transaction for the purchase of merchandise by signing a retail instalment contract and security agreement with Defendant.

8. Each said agreement imposed a finance charge.

9. At all times herein, the Defendant, in the ordinary course of business, regularly extended, offered to extend, arranged or offered to arrange the extension of credit to its customers for which a finance charge is or may be imposed. The Defendant is a creditor within the meaning of Section 36-393(e), of the Connecticut General Statutes.

COUNT I

1. Plaintiff incorporates by reference Paragraphs 1 through 9 of the Complaint as Paragraphs 1 through 9 of this Count, the same as if fully pleaded herein.

10. The retail instalment contracts do not contain the disclosures required by Section 36-393 *et seq.*, of the Connecticut General Statutes.

COUNT II

1. Plaintiff incorporates by reference Paragraphs 1 through 9 of the Complaint as Paragraphs 1 through 9 of this Count, the same as if fully pleaded herein.

Complaint

10. The said retail instalment contracts do not contain the disclosures required by Section 42-83 *et seq.*, of the Connecticut General Statutes.

11. Defendant's refusal to give said disclosures is a wilful violation within the meaning of Section 42-99 of the Connecticut General Statutes.

COUNT III

1. Plaintiff incorporates by reference Paragraphs 1 through 9 of the Complaint as Paragraphs 1 through 9 of this Count, the same as if fully pleaded herein.

10. Said retail instalment contracts contain unconscionable provisions rendering said contracts void, unenforceable and of no effect.

WHEREFORE, Plaintiff respectfully prays that this Court:

- (1) Assume jurisdiction of this case;
- (2) Award the Plaintiff twice the amount of the finance charge in connection with each transaction but not less than \$100.00 nor more than \$1000.00 for each transaction;
- (3) Order cancellation and refund of all interest and delinquency and collection charges on said retail instalment contracts;
- (4) Award the Plaintiff costs and a reasonable attorney fee;
- (5) Award such other and further relief as the Court deems just and proper.

Complaint

DATED: November 29, 1973

THE PLAINTIFF

JEAN D'AGOSTA

By /s/ DAVID M. LESSER
David M. Lesser
William H. Clendenen, Jr.
CLEDENEN & LESSER
152 Temple St. #310-11
New Haven, Connecticut 06510
203/787-1183

Answer Presenting Defenses Under Rule 12B

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

Civil Action No. 15,923

{SAME TITLE}

FIRST DEFENSE

1. The Defendant admits the allegations contained in Paragraphs 1, 4, 5, 6 and 9 of the Complaint.
2. The Defendant denies the allegations contained in Paragraph 2 of the Complaint.
3. The Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 3, 7 and 8 of the Complaint.

Count One:

1. The answers to Paragraphs 1 through 9 of the Complaint are hereby made the answers to Paragraphs 1 through 9 of this first count of the complaint.
2. The Defendant denies the allegations contained in Paragraph 10 of the first count of the complaint.

Count Two:

1. The answers to Paragraphs 1 through 9 of the Complaint are hereby made the answers to Paragraphs 1 through 9 of this second count of the Complaint.

Answer

2. The defendant denies the allegations contained in Paragraphs 10 and 11 of the second count of the Complaint.

Count Three:

1. Answers to Paragraphs 1 through 9 of the Complaint are hereby made the answers to Paragraphs 1 through 9 of this third count of the Complaint.

2. The Defendant denies the allegations contained in Paragraph 10 of the third count of this Complaint.

SECOND DEFENSE

The Court lacks subject matter jurisdiction because the claims alleged in the Complaint do not arise under the constitution, laws, or treaties of the United States, and the matter in controversy does not exceed the sum or value of \$10,000 exclusive of interest or costs.

THIRD DEFENSE

The second count of the Complaint fails to state a claim against the Defendant upon which relief can be granted.

FOURTH DEFENSE

Insofar as Count One of the Complaint purports to state a cause of action based on retail installment sales contracts entered into prior to November 29, 1972 said cause of action is barred by the applicable statute of limitations.

Count One:

1. On or about December 13, 1972 the plaintiff entered into a retail installment sales contract with the defendant.

Answer

2. Under the terms of said contract, the plaintiff agreed to pay to the defendant the sum of \$1794.67 in 36 equal monthly installments of \$49.00 and a final installment of \$30.67 commencing on January 13, 1973, and subsequent installments on the same day of each consecutive month until paid in full.

3. The plaintiff has defaulted in her monthly payments.

4. Said agreement provides that upon default the unpaid total of payments shall become due and payable.

5. Said agreement also provides for attorneys fees of 15 per cent in the event of default.

6. The balance due from the plaintiff to the defendant on said agreement is \$1407.57.

WHEREFORE, Defendant demands judgment against the plaintiff in the sum of \$1407.57 plus interest and attorneys fees.

Dated: May 6, 1974

THE DEFENDANT

By WILLIAM J. EGAN
William J. Egan
of Wiggin & Dana
P. O. Box 1832
205 Church Street
New Haven, Connecticut

Reply to Counterclaim

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

[SAME TITLE]

1. The Plaintiff admits Paragraphs 1 and 2 of the counterclaim.

2. The Plaintiff denies Paragraphs 3, 4 and 5 and 6 of the counterclaim.

FIRST DEFENSE

The Court lacks subject matter jurisdiction over the counterclaim.

SECOND DEFENSE

The counterclaim fails to state a claim against the Plaintiff upon which relief can be granted.

THIRD DEFENSE

The contract of December 13, 1972 did not provide Plaintiff with the requisite information and disclosures and is therefore void under Connecticut law.

FOURTH DEFENSE

The contract of December 13, 1972 is unconscionable in whole and in part in violation of §§42a-1-203 and 42a-2-302, Connecticut General Statutes.

Reply

FIFTH DEFENSE

The contract of December 13, 1972, and the methods employed by Defendant in obtaining Plaintiff's signature on said document constitute unfair and deceptive trade practices under the laws of the United States of America and of the State of Connecticut.

SIXTH DEFENSE

The merchandise which is the subject of the contract of December 13, 1972, was grossly and unconscionably overpriced.

SEVENTH DEFENSE

The merchandise which is the subject of the contract of December 13, 1972, was not as represented and was defective and not of merchantable quality.

EIGHTH DEFENSE

The Defendant has used unconscionable and illegal tactics and methods of collection and invaded the Plaintiff's privacy.

NINTH DEFENSE

Any and all alleged amounts due have been paid upon information and belief by credit insurance on the contract.

13a

Reply

TENTH DEFENSE

The interest charged on said contracts is usurious.

Dated: May 14, 1974

THE PLAINTIFF

Jean D'Agosta

By /s/ WILLIAM H. CLENDENEN, JR.

William H. Clendenen, Jr.

David M. Lesser

CLENDENEN & LESSER

152 Temple Street #310-11

New Haven, Connecticut 06510

**Motion for Partial Summary Judgment
Against Defendant W. T. Grant Company**

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

[SAME TITLE]

The Plaintiff moves the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a partial summary judgment in favor of the Plaintiff as to Count I of the Complaint, based upon the attached affidavit and exhibits, and the pleadings and documents on file with the Court, on the ground that there is no genuine issue of material fact as to Count I of the Complaint and the Plaintiff is entitled to judgment as a matter of law.

THE PLAINTIFF

Jean D'Agosta

Dated: May 14, 1974

By /s/ WILLIAM H. CLENDENEN, JR.
William H. Clendenen, Jr.
David M. Lesser
CLENDENEN & LESSER
152 Temple Street #310-11
New Haven, Connecticut 06510

Affidavit of Jean D'Agosta in Support of Motion

STATE OF CONNECTICUT,
COUNTY OF NEW HAVEN, ss.: NEW HAVEN

I, JEAN D'AGOSTA, being first duly sworn, depose and say:

I am the Plaintiff in the above action and have personal knowledge of the facts herein set forth.

This affidavit is submitted in support of my motion for summary judgment herein, for the purpose of showing that there is no genuine issue as to any material fact, and that the Plaintiff is entitled to judgment as a matter of law.

1. I reside at 131 Chatham Street, New Haven, Connecticut.

2. I am a citizen of the United States and the State of Connecticut.

3. On December 1, 1972, I entered into a consumer credit transaction for the purchase of merchandise by signing a retail instalment contract and security agreement with Defendant W.T. Grant Company [attached Exhibit A].

4. On December 13, 1972, I entered into a consumer credit transaction for the purchase of merchandise by signing a retail instalment contract and security agreement with Defendant W.T. Grant Company [attached Exhibit B].

5. In said transactions, I also entered into a contractual relationship with the Defendant W.T. Grant Company for extended credit on a prior balance due to said company.

Affidavit of Jean D'Agosta in Support of Motion

6. Said transaction of December 1, 1972, imposed a finance charge of \$388.49 at an annual percentage rate of 19.90%.

7. Said transaction of December 13, 1972, imposed a finance charge of \$436.00 at an annual percentage rate of 18.85%.

JEAN D'AGOSTA

(Sworn to by Jean D'Agosta, March 24, 1974.)





retail instalment sale add-on only

GRANTS CREDIT PLAN

SELLER: W. T. GRANT COMPANY, 1441 BROADWAY
NEW YORK, N. Y. 10018

Seller's Place of Business

Buyer(s)

Buyer's

Residence

Employer

FULL NAME OF HUSBAND (IF MARRIED)

WIFE'S FIRST NAME

CITY

STATE

ZIP CODE

Weekly Income

To induce the W. T. Grant Company to make this sale, the buyer (herein called, whether one or more, the "buyer") represents that the information submitted in applying for this account is accurate and hereby buys from the seller and the seller sells the merchandise and/or merchandise coupon books listed below upon the following terms and conditions:

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	PRICE	SERIAL NO.
1	52233 Gas Range	210.00	23326
	Tax. 1526		97711
A. Prior balance due before rebate of FINANCE CHARGE	1207.22	7. Amount financed (the sum of lines B, 5, 6(a) and 6(b))	1197.39
B. Prior balance due after rebate of FINANCE CHARGE	964.13	8. (a) Finance charge \$388.49	145.40
1. Cash price (new sales)	233.26	(b) Less rebate \$243.07 equals	1585.88
2. Cash down payment		9. Deferred payment price (the sum of lines B, 1, 4, 6(a), 6(b) and 8(a))	378.66
3. Unpaid balance of cash price (1 minus 2)	233.26	10. Net add-on (the sum of lines 5, 6(a), 6(b) and 8)	1585.88
4. Property insurance (if selected, based on 1)		11. Total payments (the sum of lines 7 and 8 (a))	
5. Total of 3 plus 4	233.26	The Buyer agrees to pay to the Seller the "Total of Payments" shown above (11) in 36 equal installments of \$43.00 and one final installment of \$ starting on 11/1/73 and all subsequent installments on the same day of each consecutive month until paid in full.	
6. Other insurance charge:			
(a) Credit life insurance (if selected)			
(b) Accident and sickness insurance (if selected)			

Payments due hereunder are to be made to the W. T. Grant Company at

Chapel St. N.H.Cf.
STORE ADDRESS

ANNUAL PERCENTAGE RATE 1990%

The buyer agrees to make payments in accordance with the above schedule; and (A) to assume responsibility for the loss, damage or destruction of the merchandise; (B) not to sell, remove from the County or State or encumber the merchandise without the seller's prior written consent; (C) that the seller shall retain title to and a purchase money security interest in such merchandise except coupons until all amounts due hereunder shall have been paid, and the right, to possession in case of default; and (D) that whenever the payment of any instalment may be in default hereunder for at least (10) days the buyer shall pay to the seller, a late charge of (5%) of the instalment in default, or the sum of (\$5) dollars, whichever is less; (E) that if seller refers this contract to an attorney not a salaried employee of the seller for collection, buyer agrees to pay in addition to the amount then remaining due hereunder, a further amount equal to fifteen (15) per cent of the amount due and payable, plus court costs; (F) that upon default in any payment hereunder the entire unpaid total of payments shall at seller's election become due and payable; (G) that the acceptance by the seller of any payment in a lesser amount or after a default by the buyer hereunder shall not operate to extend the time of payment of any amount then remaining unpaid hereunder or constitute a waiver of any of the rights of the seller; (H) Buyer if over 21 and married, represents having authority from spouse to sign this Retail Instalment Credit Contract.

This entire agreement to be effective only upon credit approval of W. T. Grant Company's Credit Department.

CREDIT APPROVAL STAMP

VOLUNTARY INSURANCE AGREEMENT

This insurance does not provide coverage for personal liability and property damage caused to others. The cost of each type of insurance for the term of the contract listed below and you may select the coverage you desire by checking the appropriate box and signing and inserting the date where indicated. If no box is checked and this insurance agreement is unsigned, no coverage will be provided. Print the name of the insured only when credit life and accident and sickness insurance is selected. Property insurance may be obtained by you through any person of your choice. This insurance does not provide coverage for personal liability and property damage caused to others.

☐ I wish Property☐ I wish Credit Life and Accident & Sickness

TOTAL \$

The name of the insured is

I HEREBY ACKNOWLEDGE RECEIPT OF CERTIFICATE(S) OF INSURANCE(S).

Date

Signed

X

ACCOUNT NUMBER
23054B

NOTICE TO BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others; (a) to pay off in advance the full amount due and obtain a partial refund of the finance charge; (b) to redeem the property if repossessed for a default; (c) to require, under certain conditions, a resale of the property if repossessed. 4. You may prepay this contract at any time before final instalment is due and receive rebate credit of unearned finance charge and charge(s) for insurance(s) if any, in accordance with the sum of digits method. When such rebate is less than \$1, no rebate will be made. 5. You may at any time return unused coupons to the store where purchased and receive a full credit refund for the face amount thereof plus a complete finance charge refund on the unused coupons. A like adjustment is made on insurance charges, if any. 6. If a coupon book (unused or partially used) is lost, destroyed or stolen, the company will, on prompt notice of such mishap, replace the lost coupons or adjust the unpaid balance due by deducting therefrom the face value of the coupons missing and all finance charges and insurance charges thereon. Replacement or adjustment will usually be at the buyer's option; however, the seller may in its sole discretion insist upon account adjustment. 7. If the amount owed for the coupons is paid within 30 days of the date the coupons are first redeemed, no finance charge will be imposed. 8. A buyer has a choice of purchasing a coupon book in denominations of \$20 to \$200.

BUYER ACKNOWLEDGES RECEIPT OF AN EXECUTED COPY OF THIS RETAIL INSTALMENT CONTRACT.

W. T. GRANT COMPANY

X

Jean D'Agostia
(Buyer)

By

H. H. H. H.

(Co-Buyer)



retail instalment sales contract-add-on only

WANTS CREDIT PLAN

SELLER: W. T. GRANT COMPANY, 1441 BROADWAY
NEW YORK, N. Y. 10018

Seller's Place of Business Midford Ct DATE 12/13/72
Buyer(s) J. D. [Signature]
Buyer's Residence 129 Chatham St WIFE'S FIRST NAME New Haven
NO. AND STREET OR ROAD AND ROUTE CITY STATE ZIP CODE
Employer _____ Weekly Income _____

To induce the W. T. Grant Company to make this sale, the buyer (herein called, whether one or more, the "buyer") represents that the information submitted in applying for this account is accurate and hereby buys from the seller and the seller sells the merchandise and/or merchandise coupon books listed below upon the following terms and conditions:

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	PRICE	SERIAL NO.
1	<u>30 Danbury St</u>	<u>160.79</u>	<u>46805</u>

A. Prior balance due before rebate of FINANCE CHARGE	<u>1385.88</u>	7. Amount financed (the sum of lines B, 5, 6(a) and 6(b))	<u>436.49</u>	<u>1385.18</u>
B. Prior balance due after rebate of FINANCE CHARGE	<u>1197.39</u>	8. (a) Finance charge <u>\$ 5.47</u>		<u>48.20</u>
1. Cash price (new sales)	<u>160.79</u>	(b) Less rebate \$ <u>5.47</u> equals		
2. Cash down payment		9. Deferred payment price (the sum of lines B, 1, 4, 6(a), 6(b) and 8(a))		<u>1794.67</u>
3. Unpaid balance of cash price (1 minus 2)	<u>160.79</u>	10. Net add-on (the sum of lines 5, 6(a), 6(b) and 8)		<u>208.79</u>
4. Property insurance (if selected, based on 1)		11. Total payments (the sum of lines 7 and 8 (a))		<u>1794.67</u>
5. Total of 3 plus 4	<u>160.79</u>	The Buyer agrees to pay to the Seller the "Total of Payments" shown above (11) in <u>36</u> equal installments of <u>\$ 49.00</u> and one final installment of <u>\$ 30.67</u> starting on <u>1/13/73</u> and all subsequent installments on the same day of each consecutive month until paid in full.		
6. Other insurance charge: (a) Credit life insurance (if selected) (b) Accident and sickness insurance (if selected)				

Payments due hereunder are to be made to the W. T. Grant Company at New Haven Ct STORE ADDRESS

ANNUAL PERCENTAGE RATE 18.85 %

The buyer agrees to make payments in accordance with the above schedule; and (A) to assume responsibility for the loss, damage or destruction of the merchandise; (B) not to sell, remove from the County or State or encumber the merchandise without the seller's prior written consent; (C) that the seller shall retain title to and a purchase money security interest in such merchandise except coupons until all amounts due hereunder shall have been paid, and the right, to possession in case of default; and (D) that whenever the payment of any instalment may be in default hereunder for at least (10) days the buyer shall pay to the seller, a late charge of (5%) of the instalment in default, or the sum of (5) dollars, whichever is less; (E) that if seller refers this contract to an attorney not a salaried employee of the seller for collection, buyer agrees to pay in addition to the amount then remaining due hereunder, a further amount equal to fifteen (15) per cent of the amount due and payable, plus court costs; (F) that upon default in any payment hereunder the entire unpaid total of payments shall at seller's election become due and payable; (G) that the acceptance by the seller of any payment in a lesser amount or after a default by the buyer hereunder shall not operate to extend the time of payment of any amount then remaining unpaid hereunder or constitute a waiver of any of the rights of the seller; (H) Buyer if over 21 and married, represents having authority from spouse to sign this Retail Instalment Credit Contract. This entire agreement to be effective only upon credit approval of W. T. Grant Company's Credit Department.

CREDIT APPROVAL STAMP

VOLUNTARY-INSURANCE AGREEMENT

This insurance does not provide coverage for personal liability and property damage caused to others. The cost of each type of insurance for the term of the contract listed below and you may select the coverage you desire by checking the appropriate box and signing and inserting the date where indicated. If no box is checked and this insurance agreement is unsigned, no coverage will be provided. Print the name of the insured only when credit life and accident and sickness insurance is selected. Property insurance may be obtained by you through any person of your choice. This insurance does not provide coverage for personal liability and property damage caused to others.

- ☐ I wish Property _____ \$ _____
☐ I wish Credit Life and Accident & Sickness _____ \$ _____
TOTAL \$ _____

The name of the insured is _____

I HEREBY ACKNOWLEDGE RECEIPT OF CERTIFICATE(S) OF INSURANCE(S)

Date _____

Signed X

ACCOUNT NUMBER
4305916

Credit Approved

Store #650

Date _____

By _____

NOTICE TO BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others; (a) to pay off in advance the full amount due and obtain a partial refund of the finance charge; (b) to redeem the property if repossessed for a default; (c) to require, under certain conditions, a resale of the property if repossessed. 4. You may prepay this contract at any time before final instalment is due and receive rebate credit of unearned finance charge and charge(s) for insurance(s) if any, in accordance with the sum of digits method. When such rebate is less than \$1, no rebate will be made. 5. You may at any time return unused coupons to the store where purchased and receive a full credit refund for the face amount thereof plus a complete finance charge refund on the unused coupons. A like adjustment is made on insurance charges, if any. 6. If a coupon book (unused or partially used) is lost, destroyed or stolen, the company will, on prompt notice of such mishap, replace the lost coupons or adjust the unpaid balance due by deducting therefrom the face value of the coupons missing and all finance charges and insurance charges thereon. Replacement or adjustment will usually be at the buyer's option; however, the seller may in its sole discretion insist upon account adjustment. 7. If the amount owed for the coupons is paid within 30 days of the date the coupons are first redeemed, no finance charge will be imposed. 8. A buyer has a choice of purchasing a coupon book in denominations of \$20 to \$200.

BUYER ACKNOWLEDGES RECEIPT OF AN EXECUTED COPY OF THIS RETAIL INSTALMENT CONTRACT.

W. T. GRANT COMPANY

X

(Buyer)

By _____

(Co-Buyer)



**Ruling on Plaintiff's Motion for
Partial Summary Judgment**

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

[SAME TITLE]

The instant action arises from plaintiff's purchase of goods from defendant under written retail installment contracts, challenged here as unconscionable and violative of both retail installment sales financing legislation, cf. Conn. Gen. Stat. § 42-83, *et seq.*, and applicable truth in lending regulations, cf. 12 CFR § 226.12(c) (1974). Plaintiff has moved for summary judgment on her truth in lending claim, separately stated as Count I of the complaint, seeking those liquidated damages and attorney's fees which are the statutory measure of individual recovery, cf. 15 U.S.C. § 1640(a).

Jurisdiction is conferred by 15 U.S.C. § 1640(e), and defendant's liability is established as a matter of law on the record presented. Defendant's admissions by answer and plaintiff's uncontroverted affidavit and annexed exhibits indisputably demonstrate the parties' entry into two distinct consumer credit transactions, on December 1, 1972 and December 13, 1972, and defendant's failure on each occasion as a regulated creditor to comply with truth in lending requirements in respects previously discussed in *Ives v. W. T. Grant Co.*, Civil No. 15,125 (D. Conn. March 19, 1974). It should perhaps be noted in passing that defendant's contention of bona fide error, cf. 15 U.S.C. § 1640(c), expressly raised in unsuccessfully opposing the grant

*Ruling on Plaintiff's Motion for Partial
Summary Judgment*

of equitable relief in *Ives*, is equally unavailing as a potential defense against the present claim for damages, see, e.g., *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1166-1167 (7 Cir. 1974), and indeed that defendant has urged neither this nor any other conceivable defense, cf. Public Law 93-495, § 406 (October 28, 1974).

The accuracy of plaintiff's calculation by affidavit of the finance charge imposed in each of the two separate transactions also being unquestioned, there remains for decision only the appropriate amount of an attorney's fee to be awarded. The pending motion is hereby granted, cf. Rule 56(c) and (e), Fed. R. Civ. P., subject to plaintiff's further prompt application for and the undersigned United States District Judge's determination of the reasonable attorney's fee to which plaintiff is entitled, cf. *Williams v. American Tractor Trailer Training, Inc.*, Civil No. 14,117 (D. Conn. April 5, 1974). Upon such determination, there being no just reason for delay, judgment shall accordingly enter for plaintiff on Count I of the complaint in the amount of such attorney's fee award together with the sum of \$776.98 in connection with the transaction of December 1, 1972 and the sum of \$872.00 in connection with the transaction of December 13, 1972, cf. Rule 54(b), Fed. R. Civ. P.

Dated at New Haven, Connecticut, this 28th day of February 1975.

ARTHUR H. LATIMER
United States Magistrate

So ORDERED

JON C. NEWMAN
United States District Judge

Partial Summary Judgment

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

{SAME TITLE}

This cause having come on for consideration on plaintiff's motion for partial summary judgment before United States Magistrate Arthur H. Latimer, and the Magistrate having rendered his Ruling on Plaintiff's Motion for Partial Summary Judgment, under date of March 4, 1975 (approved by the Court, Newman, J.), granting partial summary judgment,

It is ORDERED and ADJUDGED that partial summary judgment be and is hereby entered for the plaintiff on Count 1 of the complaint in the amount of such attorney's fee award together with the sum of SEVEN HUNDRED SEVENTY SIX DOLLARS and NINETY-EIGHT CENTS (\$776.98) in connection with the transaction of December 1, 1972, and the sum of EIGHT HUNDRED SEVENTY-TWO DOLLARS (\$872.00) in connection with the transaction of December 13, 1972, cf. Rule 54(b), F.R.Civ.P.

Dated at New Haven, Connecticut, this 5th day of March, 1975.

SYLVESTER A. MARKOWSKI

Clerk, United States District Court

By /s/ FRANCIS J. CONSIGLIO

Deputy In Charge

Notice of Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. 15,923

JEAN D'AGOSTA,

Plaintiff,

vs.

W. T. GRANT COMPANY,

Defendant.

Notice is hereby given that W. T. Grant Company, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the partial summary judgment entered in favor of the plaintiff on March 5, 1975.

Dated: New Haven, Connecticut
March 17, 1975

DEFENDANT

By WILLIAM J. EGAN
William J. Egan
Of Wiggin & Dana
P. O. Box 1832
New Haven, Connecticut
Its Attorneys

In the
UNITED STATES COURT OF APPEALS
For the Second Circuit

Docket No. 75-7187

Jean D'Agosta,
Plaintiff-Appellee,
vs
W.T. GRANT COMPANY,
Defendant-Appellant.

Affidavit
of
Service by Mail

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE DISTRICT
OF CONNECTICUT

STATE OF NEW YORK }
COUNTY OF New York } ss.:

Robert McElroy , being duly sworn,
deposes and says:

I am over the age of twenty-one years and reside at
32 Gramercy Park South , in the
Borough of Manhattan City of New York. On the
16th day of May , 1975 , at 4:00 o'clock pm ,
I served 3 copies of the Brief and the Appendix

in the above-entitled action on:

William H. Clendenen, Jr.
152 Temple Street
New Haven, Connecticut

the attorney for the Plaintiff-Appellee

in the said action, by depositing said copies, securely
wrapped, properly addressed, and postage fully prepaid,
in a post office box regularly maintained by the U. S.
Government in the post office at 90 Church Street, in the
Borough of Manhattan, City of New York.

Robert McElroy

Sworn to before me this
16th day of May , 1975 }

Michael J. Hoops

MICHAEL J. HOOPS
Notary Public, State of New York
No. 30-4503056
Qualified in Nassau County
Commission Expires March 30, 1977